IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.131 OF 2004
IN
COMPANY PETITION NO.541 OF 1989

The Sangli Bank Ltd. Applicant
versus
The Official Liquidator Respondent

Mr.Y.V.Divekar i/by Divekar & Co. for applicant.
Mr.M.C.Shah for one of the Ex-Director.
Ms.K.V.Gautam, Act.O.L. present.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 3rd August 2006

PC :

1. This is a company application by the applicants Sangli Bank Limited for the following reliefs :-

(a) that the time to execute the Deed of Conveyance in favour of the applicants in respect of the immovable property of the respondent company purchased by the applicants be extended and the Liquidator be permitted to execute the Deed of Conveyance in favour of the applicants within such suitable time as may be decided by this Hon'ble Court;

(b) that the delay in making of this application and the delay in approaching the Official Liquidator for the execution of the Deed of Conveyance be condoned"

2. I have heard Shri Divekar appearing for the applicants and the Acting Official Liquidator present in the Court.

3. When this company application was placed before me on 27th July 2006 Shri M.C.Shah appeared and stated that he is representing one of the Ex-Directors of the company in liquidation and he sought time to take out appropriate proceedings in addition to placing the objections on record.

4. Today, Shri Shah tendered one affidavit purporting to place on record objections of the ex-director to the reliefs claimed by Sangli Bank in this company application. Shri Shah submits that these objections be taken on record because the applicant Sangli Bank has instituted proceedings before the Debt Recovery Tribunal and there are certain orders and directions issued during the course of the same. He seeks to raise certain jurisdictional issues and in that behalf places reliance upon a decision of Supreme Court namely AIR-2000-SC-1535 (Allahabad Bank Vs. Canara Bank and another) which has held that the

DRT would have exclusive jurisdiction. He has also sought to rely a decision of this Court in Company Petition Nos.215/1997, 903/1999 and 703 of 1996 dated 14th January 2005 which has followed the Supreme Court decision.

5. He has also annexed to the affidavit copies of certain applications preferred before the DRT, Aurangabad. However, the fact remains that no proceedings are instituted by the ex-director in this Court.

6. I had repeatedly brought to the notice of Shri Shah that when a statement was made that the ex-director would adopt appropriate proceedings, it was an admitted fact that the remedy of the ex-director, is not to appear and make any submissions or raise objections to the reliefs claimed in the present company application. However, beyond tendering an affidavit and annexing therewith copies of certain orders in proceedings before the DRT so also the Supreme Court judgement, Shri Shah has not taken out any proceedings. Even otherwise, it is clarified by Shri Divekar that this Company Application is restricted to an immovable property which is already sold under the orders passed by this

Court by the Official Liquidator. The entire purchase price was paid. The sale is confirmed. All that remains is execution of Conveyance Deed and this Court, therefore, should issue appropriate directions to the Official Liquidator in that behalf. This request of the applicant bank is not opposed by the Official Liquidator. The Official Liquidator rather confirms all facts which are set out in the accompanying affidavit. In this view of the matter, any order that would be passed on this company application, would be only with regard to the Conveyance Deed pertaining to the immovable property which has been sold by and under the directions of this Court. There is neither any prejudice caused to the ex-director by such course of action nor his remedies and rights are affected. Therefore, beyond taking the affidavit on record in this proceedings, I do not feel it necessary to go into various contentions which are set out therein.

7. As far as this company application is concerned, I had called upon the applicants Sangli Bank to explain as to what steps it had taken pursuant to the confirmation of the sale to move the Official Liquidator. The Sangli Bank

has filed an affidavit affirmed on 26th July 2006 and in paras 3 to 6 it is pointed out that the applicant was already in physical possession of the property. Till 2003, because of inadvertence, it did not approach the Official Liquidator for executing the Deed of Conveyance. The Deed of Conveyance was to be executed within a period of six weeks from the date of confirmation. However, it is pointed out that because this aspect was not included in the terms and conditions and on account of the bona fide mistake, the applicant bank did not approach the Official Liquidator. The statements made in the affidavit in support of the company application and this further affidavit are not controverted by the Official Liquidator. This is essentially a matter between the applicant and the Court. In such proceedings, nothing prevents this Court from exercising its inherent powers and issuance of such directions as are necessary for meeting the ends of justice. Shri Shah does not dispute that this Court can consider the relief claimed in the company application. However, his submission is that there is inordinate delay on the part of Sangli Bank which remains unexplained and, therefore, this Court may not grant reliefs in discretionary and equitable jurisdiction.

More so, in the light of the applications pending before DRT, Aurangabad.

8. As pointed out above, it is for me to accept the explanation tendered on affidavit by the applicant. It is a matter of discretionary and equitable jurisdiction of this Court. It can be exercised in applicant's favour,if the applicant's explanation does not appear to be lacking in bona fides. However, on account of delay committed, it would be appropriate to direct payment of some costs. Since the sale has already been confirmed, the amount tendered and the applicant put in possession, it would not be proper to deny the reliefs claimed. More so, when there does not appear to be any malafides.

9. Company Application is made absolute in terms of prayer clauses (a) and (b). However, the applicant to pay costs quantified at Rs.25,000/- (Rs.Twenty five thousand only) to be paid to the Official Liquidator. Payment of costs is condition precedent. Time to execute the conveyance is extended by six weeks from today.

10. Needless to state that this order does not prevent the ex-director from taking appropriate

proceedings and pursuing them in accordance with law.

(S.C.DHARMADHIKARI, J.)